Specifically, Jenkins et al. discloses compositions containing

- from about 50 to about 95 weight percent of HDPE,
- from about 5 to 40 weight percent of polyisobutylene, and
- from about 1 to 30 weight percent of a filler, such as talc.

The Jenkins compositions are used for the manufacture of **films.**

The content of talc in the Jenkins' compositions is expressed differently, ie., from about 1 to 30 weight percent of a filler such as talc.

By way of explanation it is noted that, the theoretically disclosed compositions containg the maximum of HDPE (i.e. 95wt % of HDPE) and the minimum of talc (i.e., 1 wt % of talc) have an amount of talc which is (1/95) x 100**= 1.05 part of talc per 100 parts of HDPE**.

Whatever the Examiner's theory of inherency may be, the Jenkins et al compositions contain more than 1 part of talc per 100 parts of HDPE; for example, if the Examiner believes that Jenkins inherently discloses compositions contain .99 weight % of talc, theses composotions contain more than 1 part of talc per 100 parts of HDPE (indeed 99/95) x 100**=1.04 part of talc per 100 parts of HDPE).:**

Moreover, it is applicants' view, that inherencey is not an appropriate basis for the rejection. Inherency is the single and necessary and inevitable result of a disclosure; if the construction of the reference can be other than that advanced by the Examiner then "inherency" is not a basis for a grounds of rejection. Inherencey is not a basis because "about 1 percent" as interpreted by the USPTO can mean 2 percent.

As noted in applicants' prior response the MPEP Section 2131 and 2131.03 are in agreement with applicants' position.

The compositions of claim 1 are novel in view of Jenkins. Claims 2, 3 and 5 are also novel in view of Jenkins.

Applicants respectfully traverse the rejection of the claims over Jenkins et al in view of (WO'3194).

As stated above, Jenkins et al. discloses compositions containing,

- from about 50 to about 95 weight percent of HDPE,
- from about 5 to 40 weight percent of polyisobutylene, and
- from about 1 to 30 weight percent of a filler, such as talc.

The Jenkins compositions are used for the manufacture of **films.**

By comparison, WO'3194 relates to a composition comprising,

- 100 parts by weight of elastomer;
- 10 to 60 phr of a thermoplastic binder, which can be HDPE (col. 7 line 18-26)
- to 6.0 phr of a slip agent, such as talc

The WO'3194 compositions are used in the manufacture of porous pipes. The reference teaches that HDPE can be used as a binder in compositions constituted essentially of an elastomer.

Comparison of the two compositions reveals that the compositions of Jenkins et al. and those of WP'3194 are fundamentally different from each other. Jenkins et al. compositions are 50 to 95 weight percent HDPE. By comparison, the compositions of WO3194 are based on an elastomer and contain only a minor part of a binder which can be HDPE. The references relate to diametrically opposite compositional requirements. WO 85/03194 suggests that HDPE may be used as a binder. If HDPE is used as a binder in a composition according to the WO reference, then the composition will contain more elastomer, such as rubber crumb, than HDPE.

In applicants' view, there is no evidence in this record of motivation to a person in the art to substitute the poorous pipe compositions of WP3194 by the completely different Jenkins et al compositions. The use of the Jenkins et al compositions for making porous pipes is not suggested to those persons designated in 35 USC 103.

Moreover, WO 85/03194 clearly teaches that, although the thermoplastic binder can be polyethylene, high-density polyethylene binder yields pipes that are somewhat stiff, brittle and difficult to extrude (page 7, line 24-26; Examples 3 page 12, lines 25-29). The negative suggestion in WO 85/03194 concerning the use of HDPE as a binder would not motivate the person of ordinary skill to use Jenkins' composition to make pipe.

Moreover, even if the person designated in 35 USC 103 used the compositions of Jenkins et al for making the porous pipes according to WO '3194 he would not arrive at the instant invention. As outlined above, the Jenkins et al compositions contain more than 1 part of talc per 100 parts of polyethylene. The compositions of WO'3194 contains at most 60phr of HDPE and minimum 1 phr of talc. Hence the portion of talc per 100 parts of HDPE is (1/60)x100-1.7 part of talc per 100 parts of HDPE. Thus the description of the reference it self does not lead to the present invention of HDPE contain less than 1 part. More specifically a the person designated in 35 USC 103 would not arrive at the compositions of the claims from the descriptions in the applied art.

Applicants respectfully traverse the rejection over Jenkins et al in view of WO '134. Applicants respectfully submit that literal combination of the descriptions of the references' requirements does not result in applicants' invention. That statement high-lights the legal error in the statement in the outstanding Office Action that:

"Pipes made by injection are well know in the art, and the Examiner takes official notice thereof. Pipe couplings are prima-racie obvious over pipes, for two reasons.. They are desinged to work in the same system, ..it has "coupled" the two pipes [page 4 Paper No. 8]."

The Rules of practice require the USPTO to cite references to support a rejection. If the USPTO is aware of "personal" information that supports a rejection, it is stated in the rules of practice that such information should be the subject of an affidavit/declaration.

Applicants respectfully traverse the rejection of Claim 15 over GB 822498.

The aim of the present invention was to provide compositions of HDPE which exhibit an improved resistance to hydrostatic pressure and consequently an improved creep resistance in order to be used for the manufacture of high pressure pipes (see application, page 1, lines 15-23).

Applicants found that the addition of a minor amount of talc (less than 1 part per 100 parts of HDPE) made it possible to obtain pipes having a markedly improved resistance to hydrostatic pressure (creep resistance) with respect to an identical composition not comprising talc (see examples pages 7-8).

GB 822,498 relates to the manufacture of films of polyethylene made by the high pressure process (page 2, col. 1, lines 11-12). It is general knowledge that this process results in low-density polyethylene (LDPE). It is also known that the properties and applications of HDPE and LDPE are completely different.

Consequently, the one skilled in the art has no motivation of using knowledge related to LDPE to HDPE and vice versa.

Moreover, GB 822,498 relates to a method for improving the antiblocking properties of low-density polyethylene films. GB 822,498 teaches the use of a finely divided inert material, such as magnesium silicate, as an anti-blocking agent for films. The finely divided material will prevent the film blocking by giving its surface a degree of roughness (col. 2, 1.56-65). In fact, the disclosure of GB 822,498 is similar to the disclosure of Italian Patent 719,725 and of European Patent EP-B-60178 already commented in the present application on page 1, lines 7-15.

One skilled in the art desiring to improve the resistance of HDPE pipes to hydrostatic pressure is not motivated to use a teaching relating to the improvement of the antiblocking of LDPE films.

Consequently, the skilled in the art is not motivated to use the teaching of GB 822,498 for manufacture of HDPE composition for high pressure pipes.

Applicants note that the citation of new art in the Paper No. 8 and the refusal to consider the April 1999 Information Disclosure Statement. Reconsideration is respectfully solicited. In applicants' view, the U.S. Patent and Trademark Office appears to have ignored the fact that authorization [in the Information Disclosure Statement] to charge a Deposit Account was given; the U.S. Patent and Trademark Office had the alternative to disregard the applicants' statements concerning the content of the April 1999 produced references. Accordingly, applicants reiterate the Deposit Account authorization.

Respectfully submitted,

Marina V. Schneller
Reg. No. 26,032
VENABLE
P.O. Box 34385

Washington, D.C. 20043-9998
Telephone: (202) 962-4800
Telefax: (202) 962-8300

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DC2 176228